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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 AQUARIAN FOUNDATION,

11 Plaintiff,

12 v.

13 BRUCE KIMBERLY LOWNDES, et al.,

14 Defendants.
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Case No. C19-1879RSM

ORDER RE: REQUEST FOR EX PARTE
TEMPORARY RESTRAINING ORDER

16 On November 19, 2019, Plaintiff Aquarian Foundation filed a Motion for a Temporary
17 Restraining Order (“TRO”) against Defendants Bruce Kimberly Lowndes, several members of
18 the Lowndes family, organizations affiliated with that family, organizations doing business
19 with those organizations, and numerous unknown individuals. Dkt. #2. The Aquarian
20 Foundation is a spiritual nonprofit/church located in Washington State. Dkt. #1 at 2–3. Bruce
21 Lowndes and many of the other Defendants appear to reside in Tasmania, Australia. *See, e.g.*,
22 Dkt. #1-11. The TRO seeks an order enjoining Defendants from “[s]elling, marketing,
23 uploading, downloading, publishing, distributing, posting, saving or using onto or from the
24 Cloud, or using in any way Works [for which Plaintiff claims copyright and trademark
25 protection].” Dkt #2-1 at 5. The TRO further seeks to restrain Defendants from “representing,
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1 implying, claiming, or in any way stating a relationship with or authorization by Aquarian
2 Foundation, Keith Milton Rhinehart, the Church of Higher Spiritualism, or any other image or
3 icon that would lead an average consumer to perceive that there is any relationship to or
4 sponsorship by Aquarian Foundation.” *Id.*

5 Plaintiff requests this Motion be heard without notice to Defendants. Dkt. #2 at 5. In
6 support of this request, Plaintiff asserts that “[t]here is no probability that use and publication of
7 Aquarian’s property will stop unless there is *ex parte* court action. The foreign site being used
8 by defendants has not fully cooperated to recognize the rights of Aquarian, so that the account
9 is merely suspended. Defendants in Australia will be allowed up to 90 days to answer this
10 lawsuit, and have evidenced the intent to post and distribute the works on as many media as
11 will allow it.... It would be futile for counsel to further communicate with defendants since
12 they have now broken their promises and agreements to stop publishing and violating
13 Aquarian’s property.” *Id.* at 9. Plaintiff has provided no evidence of service.

14 “The Court may issue a temporary restraining order without written or oral notice to the
15 adverse party or its attorney only if specific facts in an affidavit or a verified complaint clearly
16 show that immediate and irreparable injury, loss, or damage will result to the movant before the
17 adverse party can be heard in opposition; and the movant’s attorney certifies in writing any
18 efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P.
19 65(b)(1). The Court’s Local Rules otherwise allow for the adverse party or parties to file a
20 Response to a TRO. *See* LCR 65(b)(5). The adverse party must file a notice “indicating
21 whether it plans to oppose the motion within twenty-four hours after service of the motion,”
22 and “file its response, if any, within forty-eight hours after the motion is served.” *Id.* No reply
23 is permitted from Plaintiff. *Id.*

1 “Unless the requirements of Fed. R. Civ. P. 65(b) for issuance without notice are
2 satisfied, the moving party must serve all motion papers on the opposing party before or
3 contemporaneously with the filing of the motion and include a certificate of service with the
4 motion.” LCR 65(b)(1).

5 The Court has reviewed Plaintiff’s Motion and finds it has failed to demonstrate that
6 immediate and irreparable injury will result before Defendants can be heard in opposition.
7 Plaintiff’s Motion admits it was able to obtain the suspension of a website hosting the allegedly
8 infringing content. This would seem to indicate that continuing injury has been halted to some
9 degree. Plaintiff asserts in a conclusory fashion that millions of individuals are viewing
10 infringing content, that there is no probability that this infringement will stop unless there is *ex*
11 *parte* court action, and that it would be futile for counsel to further communicate with
12 Defendants. None of this has been satisfactorily established. Furthermore, the TRO Motion
13 indicates that Plaintiff first became aware that Defendants were allegedly infringing five years
14 ago and sent a cease and desist letter to them on November 5, 2014. Dkt. #2 at 3. If the
15 infringement has been going on for five years, a delay of a few days for Defendants to respond
16 will not significantly add to Plaintiffs alleged injuries or lead to irreparable harm. Accordingly,
17 the Court will not grant *ex parte* relief and Defendants may file a response pursuant to Local
18 Rule 65(b)(5).
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22 The Court will order Plaintiff to serve Defendants immediately. Because many of
23 Defendants appear to be located in Australia, the Court will give Plaintiffs several days to
24 serve. If Plaintiffs are unable to serve within this time frame, the Court will deny this Motion
25 and Plaintiffs may refile after service of all Defendants is complete.
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1 Accordingly, the Court DIRECTS Plaintiff to serve a copy of all filings in this case on
2 all named Defendants, including this Order, by no later than noon on Friday, November 22,
3 2019, and to provide the Court with proof of service no later than 3 p.m. that same day.

4 Importantly, because Defendants will not receive timely notice of the TRO Motion, the
5 Court will extend the deadlines for Defendants to file notices of intent to respond and to
6 respond. **Defendants shall have until noon on November 25, 2019, to file notices and until**
7 **noon on November 26, 2019, to file responses, if any.**
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10 DATED this 19 day of November 2019.
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13 RICARDO S. MARTINEZ
14 CHIEF UNITED STATES DISTRICT JUDGE
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